

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL CASE NO. 1:22-cv-00209-MR**

JOSHON NANCE,)
Plaintiff,)
vs.)
FNU SIMMERER, et al.,) ORDER
Defendants.)

THIS MATTER is before the Court on Plaintiff's pro se "Motion to Dismiss His Own Claim Without Prejudice" [Doc. 29].

The pro se incarcerated Plaintiff filed this pro se civil rights action addressing incidents that allegedly occurred at the Foothills Correctional Institution.¹ The Third Amended Complaint passed initial review on claims for retaliation and the use of excessive force against Defendants Mark Simmerer and Shekina Lockwood.² [See Docs. 14, 15]. The Defendants waived service and filed an Answer, and the Court entered a pretrial

¹ The Plaintiff is now incarcerated at the Marion Correctional Institution.

² The Plaintiff refers to the Defendants as “FNU Lockwood” and “FNU” Simmerer” in the Third Amended Complaint. The Clerk will be instructed to update the Court’s record with the Defendants’ correct names.

scheduling order. [See Docs. 22, 25, 27].

On September 24, 2023,³ the Plaintiff filed the instant Motion in which he seeks to dismiss this action without prejudice because he intends to instead pursue his claims in the North Carolina Industrial Commission. [Doc. 29]. The Defendants have not responded.

Rule 41(a)(2) of the Federal Rules of Civil Procedure provides that “an action may be dismissed at the plaintiff’s request only by court order, on terms that the court considers proper....” Fed. R. Civ. P. 41(a)(2). Here, dismissal without prejudice appears to be proper, and the Defendants have not objected. The Plaintiff’s Motion will therefore be granted pursuant to Rule 41(a)(2) without prejudice. The Clerk of Court will be instructed to terminate and close this action.

IT IS THEREFORE ORDERED that the Plaintiff’s “Motion to Dismiss His Own Claim Without Prejudice” [Doc. 29] is **GRANTED**.

IT IS FURTHER ORDERED that the Clerk is respectfully instructed to substitute the Defendants’ names in the Court’s record as follows: Shekina Lockwood for “FNU Lockwood” and Mark Simmerer for “FNU Simmerer;” and to close this case.

³ Houston v. Lack, 487 U.S. 266, 276 (1988) (establishing the prisoner mailbox rule); Lewis v. Richmond City Police Dep’t, 947 F.2d 733 (4th Cir. 1991) (applying prisoner mailbox rule to § 1983 case).

IT IS SO ORDERED.

Signed: November 6, 2023



Martin Reidinger
Chief United States District Judge

